



Senate Committee On
**HOME DEFENSE, PUBLIC
SECURITY, AND PORTS**

Paula Dockery, Chair
Stephen R. Wise, Vice Chair

Meeting Packet
Friday, April 16, 2004
9:30 a.m. – 11:30 a.m.

***(Please bring this packet to the committee meeting.
Duplicate materials will not be available.)***

E X P A N D E D A G E N D A

COMMITTEE ON HOME DEFENSE, PUBLIC SECURITY, AND PORTS

Senator Dockery, CHAIR
Senator Wise, VICE-CHAIR

DATE: Friday, April 16, 2004
TIME: 9:30 a.m. -- 11:30 a.m.
PLACE: Room 110 (EL), Senate Office Building

(MEMBERS: Senators Dawson, Garcia, Hill, Klein, Peaden, Saunders and Sebesta)

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 2616 Natural Resources / Atwater (Similar H 1185)	WMDs/Screenings/Public Safety; authorizes water management districts to require screening of employee, appointee, or applicant for position critical to security or public safety; authorizes screening of contractor or employee thereof, vendor, repair person, or delivery person who has access to certain public facilities; requires that fingerprints of applicants & employees be submitted to FDLE & FBI for check of criminal history records, etc. Creates 373.6055.	
		NR 03/30/04 CS HP 04/16/04 CJ	
2	CS/SB 2654 Criminal Justice / Jones et al	Carrying Of Concealed Weapons; prohibits carrying of concealed weapon or firearm within district legislative offices, within Capitol Building & specified surrounding buildings & in certain adjacent areas; provides exemption for secured weapons or firearms in vehicles parked within parking garage attached to any of specified buildings, or in manner designated by Capitol Police. Amends 790.06.	
		CJ 03/31/04 CS HP 04/16/04	
3	CS/SB 2664 Natural Resources / Smith (Similar H 1613)	Vessel Safety; provides exception for purposes of law enforcement to provisions requiring display of lighted lamps; provides legislative intent to authorize state & local law enforcement agencies to operate in federally designated safety zones, security zones, regulated navigation areas, & naval vessel protection zones; prohibits entrance to such zone by swimming, diving, wading, or similar means, etc. Amends Ch. 327, 316.217, 901.15.	
		NR 03/22/04 CS HP 04/16/04 CJ AGG AP	
4	CS/SB 2766 Comprehensive Planning / Constantine (Similar H 0863)	Emergency Planning/Right-to-Know Act; updates reference to substances listed in Emergency Planning & Community Right-to-Know Act. Amends 252.85.	
		CP 03/29/04 CS HP 04/16/04	

E X P A N D E D A G E N D A

COMMITTEE ON HOME DEFENSE, PUBLIC SECURITY, AND PORTS

DATE: Friday, April 16, 2004

TIME: 9:30 a.m. -- 11:30 a.m.

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SJR 0566 Geller (Similar H 0657)	Basic Rights/State Constitution; constitutional amendment to delete provisions authorizing Legislature to regulate or prohibit ownership, inheritance, disposition, & possession of real property by aliens ineligible for citizenship. Amends s. 2, Art. I. JU 03/30/04 FAVORABLE HP 04/16/04 RC	

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2616

SPONSOR: Natural Resources Committee and Senator Atwater

SUBJECT: Water Management District Employees, Appointees and Contractors

DATE: April 6, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Kiger	NR	Fav/CS
2.	Dodson RD	Skelton SB	HP	
3.			CJ	
4.				
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6.				

I. Summary:

This bill authorizes the water management districts (districts) to conduct employment screening, including a criminal history record check and fingerprinting, for an employee, appointee, employment applicant, or for any private contractor, employee of a contractor, vendor, repair person or delivery person having access to any public facility or any publicly operated facility within the water management district's jurisdiction if the district finds the facility is critical to security or safety.

This bill creates section 373.6055, Florida Statutes.

II. Present Situation:

Chapter 110, F.S.

Section 110.127, F.S., authorizes employing agencies to designate employee positions that, because of the special trust or responsibility or sensitive location of those positions, require that persons occupying those positions be subject to a security background check, including fingerprinting, as a condition of employment. For purposes of the chapter, "employing agencies" is defined as any agency authorized to employ personnel to carry out the responsibilities of the agency under the provisions of chapter 20, F.S., or other statutory authority.

Chapter 435, F.S.

Section 435.03, F.S., provides for Level 1 screening standards for employees required by law to be screened as a condition of employment. Level 1 screenings include employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE). An employment disqualification list is established for persons applying for Level 1 positions. Such persons may not have been found guilty of offenses such as

aggravated assault, vehicular homicide, elder abuse or neglect, aggravated battery and kidnapping.

Section 435.04, F.S., provides for Level 2 screening standards for employment which includes fingerprinting, as well as employment history checks and statewide criminal correspondence checks. An employment disqualification list is also established for Level 2 positions and includes additional offenses such as negligent treatment of children, resisting arrest with violence, aiding in an escape, and depriving a law enforcement officer of means of protection.

Chapter 943, F.S.

Under chapter 943, F.S., the FDLE is the state's central repository for criminal record information and has the 3rd largest computerized criminal history file in the nation which contains criminal history records on more than 4 million offenders. The FDLE maintains and provides access to criminal history information which is commonly used for security and background screening of individuals.

Protection of Water Supplies and Water Facilities

The protection of water supplies and water supply facilities has gained significance since September, 2001. Because of water's importance to the public health and safety, increased security measures at water system components and infrastructure are necessary to ensure water quantity, water quality, and water delivery, and to prevent disruption of essential water services.

III. Effect of Proposed Changes:

Section 1. Creates s. 373.6055, F.S., to provide that each water management district is authorized to conduct employment screening of any employee or appointee which the water management finds is critical to security or public safety. Each district also is authorized to conduct employment screening of any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has access to any public facility or publicly operated facility under the jurisdiction of the water management district if the district determines the facility is critical to security or safety.

Provides that each person applying for or continuing employment in any position found by the district to be critical to security or public safety may be fingerprinted. Requires fingerprints for such persons to be submitted to the Department of Law Enforcement for a state criminal history record check. Requires fingerprints of such persons also must be submitted to the Federal Bureau of Investigation for a national criminal history record check.

Authorizes the use of information received from state and national criminal history record checks in determining eligibility for employment or appointment, and in determining eligibility for continued employment. Provides that criminal background checks authorized in this section do not preempt or prevent other background screening including criminal history background checks that a water management district may undertake.

Section 2. Provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

According to the South Florida Water Management District, the private sector will bear the costs of screening or fingerprinting private contractors, employees of private contractors, vendors, repair persons, or delivery persons with access to facilities that the water management districts have designated as critical or secure facilities. Also, many of the private sector contractors doing business with the district also do business with local governments and have already been fingerprinted.

C. Government Sector Impact:

The South Florida Water Management District expects that this bill will have no fiscal impact on other state agencies and will have a minimal impact on the district as the fingerprinting provisions of the bill are permissive, and the costs of employment screening will be absorbed by the district.

Costs for the district are estimated as follows:

Total district employees: approximately 1800

Total number of employees to be fingerprinted: approximately 180 (10%)

Cost per employee: \$27

Total non-recurring cost: \$4,680

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill authorizes the water management districts to conduct a criminal investigation on any private contractor, an employee of a private contractor, vendor, repair person, or delivery person with access to any public facility or publicly operated facility which the water management district finds is critical to security or safety

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

Bill No. CS for SB 2616

Amendment No. _____



661892

CHAMBER ACTION

SenateHouse

HOME DEFENSE, PUBLIC
SECURITY AND PORTS
DATE: 4/15/04
TIME: 9:30 AM

Senator Klein moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 373.6055, Florida Statutes, is created to read:

373.6055 Criminal history checks for certain water management district employees and others.

(1) A water management district is authorized to conduct a fingerprint based criminal history check for any current or prospective employee and others designated pursuant to the water management district's security plan for buildings, facilities, and structures if those persons are allowed regular access to critical buildings, facilities, or structures defined in the water management district's security plan as restricted access areas.

(2) (a) The fingerprint based criminal history check shall be performed on any individual described in subsection (1) pursuant to the applicable water management district

Bill No. CS for SB 2616

Amendment No. ____



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1 security plan for buildings, facilities, and structures. With
2 respect to employees or others with regular access, such
3 checks shall be performed at least once every 5 years or at
4 other more frequent intervals as provided by the water
5 management district security plan for buildings, facilities,
6 and structures. Each individual subject to the criminal
7 history check shall file a complete set of fingerprints with
8 the Department of Law Enforcement taken in a manner required
9 by the Department of Law Enforcement and the water management
10 district security plan for buildings, facilities, and
11 structures. Fingerprints shall be submitted to the Department
12 of Law Enforcement for state processing and to the Federal
13 Bureau of Investigation for federal processing. The results
14 of each fingerprint based check shall be reported to the
15 requesting water management district. The costs of the
16 checks, consistent with s. 943.053(3), shall be paid by the
17 water management district or other employing entity or by the
18 individual checked.

19 (b) Each water management district security plan for
20 buildings, facilities, and structures shall identify criminal
21 convictions or other criminal history factors consistent with
22 paragraph (c) which shall disqualify a person from either
23 initial employment or authorization for regular access to
24 buildings, facilities, or structures defined in the water
25 management district's security plan as restricted access
26 areas. Such factors shall be used to disqualify all
27 applicants or employment or others seeking regular access to
28 buildings, facilities, or structures defined in the water
29 management district's security plan as restricted access areas
30 on or after the effective date of the water management
31 district security plan for buildings, facilities, and

Bill No. CS for SB 2616

Amendment No. _____



661892

1 structures and may be used to disqualify all those employed
2 or authorized for regular access as of that date. Each water
3 management district may establish a procedure to appeal a
4 denial of employment or access based upon procedural
5 inaccuracies or discrepancies regarding criminal history
6 factors established pursuant to this paragraph. A water
7 management district may allow waivers on a temporary basis to
8 meet special or emergency needs of the water management
9 district or its users. Policies, procedures, and criteria for
10 implementation of this subsection shall be included in the
11 water management district security plan for buildings,
12 facilities, and structures.

13 (c) In addition to other requirements for employment
14 or access established by any water management district
15 pursuant to its water management district security plan for
16 buildings, facilities, and structures, each water management
17 district security plan shall provide that: (1) Any person
18 who has within the past 7 years been convicted, regardless of
19 whether adjudication was withheld, for a forcible felony as
20 defined in s. 776.08; an act of terrorism as defined in s.
21 775.30; planting of a hoax bomb as provided in s. 790.165; any
22 violation involving the manufacture, possession, sale,
23 delivery, display, use, or attempted or threatened use of a
24 weapon of mass destruction or hoax weapon of mass destruction
25 as provided in s. 790.166; dealing in stolen property; any
26 violation of s. 893.135; burglary; robbery; any felony
27 violation of s. 812.014; any violation of s. 790.07; any crime
28 an element of which includes use or possession of a firearm;
29 any conviction for any similar offenses under the laws of
30 another jurisdiction; or conviction for conspiracy to commit
31 any of the listed offenses shall not be qualified for initial

Bill No. CS for SB 2616

Amendment No. _____



661892

employment within or regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas; and (2) Any person who has at any time been convicted for any of the listed offenses shall not be qualified for initial employment within or authorized regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas, unless after release from incarceration and any supervision imposed as a sentence, the person remained free from a subsequent conviction, regardless of whether adjudication was withheld, for any of the listed offenses for a period of at least 7 years prior to the employment or access date under consideration.

Section 2. This act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to water management district employees; creating s. 373.6055, F.S.; authorizing water management districts to conduct fingerprint based criminal history checks of current or prospective employees and other persons allowed regular access to restricted access areas pursuant to applicable security plans; requiring additional criminal history checks; requiring that fingerprints of applicants and employees be submitted to the Department of Law Enforcement

Bill No. CS for SB 2616

Amendment No. _____



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1 and the Federal Bureau of Investigation for processing;
2 providing for costs of criminal history checks to be paid by
3 water management districts, other employing entities; or by
4 individuals checked; requiring that water management district
5 security plans identify criminal history convictions or
6 criminal history factors which disqualify applicants for
7 employment and restricted area access and authorizing the use
8 of such factors to disqualify certain employees; authorizing
9 water management districts to establish procedures to appeal a
10 denial of employment or access under certain circumstances and
11 authorizing each water management district to grant temporary
12 waivers to meet special or emergency needs of the water
13 management district; providing offenses that disqualify a
14 person from employment or access to a restricted access area;
15 providing that an individual remain free from subsequent
16 convictions for 7 years before seeking employment or access to
17 a restricted access area; authorizing each water management
18 district to develop security plans; providing an effective
19 date.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2654

SPONSOR: Criminal Justice Committee and Senator Jones

SUBJECT: Concealed Weapons

DATE: April 6, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Dodson <i>RW</i>	Skelton <i>SB</i>	HP	
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I. Summary:

Committee Substitute for Senate Bill 2654 includes the district offices of Legislators and certain areas of the Capitol Complex as places where persons otherwise authorized to carry a concealed weapon or firearm are not authorized to carry. The bill specifically provides for concealed weapon or firearm license holders to secure weapons in their vehicles in certain parking garages on the premises or in a convenient manner designated by the Capitol Police.

This bill substantially amends the following section of the Florida Statutes: 790.06, F.S.

II. Present Situation:

Section 790.06, F.S., authorizes the Department of Agriculture and Consumer Services to issue licenses to qualified persons to carry concealed weapons and firearms for self-defense. The statute requires the person seeking the license to complete an application process which includes a criminal background check and payment of a fee to the department. The person must also demonstrate a level of competence with a firearm by completing an approved safety and training course.

Subsection (12) of s. 790.06, F.S., lists certain places where "no license issued pursuant to this section shall authorize any person to carry a concealed weapon or firearm." These places are:

- a place of nuisance as defined in s. 823.05, F.S.;
- any police, sheriff, or highway patrol station;
- any detention facility, prison, or jail;
- any courthouse;

- any courtroom, except that a judge may carry and determine that other people may carry in his or her courtroom;
- any polling place;
- any meeting of the governing body of a county, public school district, municipality, or special district;
- any meeting of the Legislature or a committee thereof;
- any school, college, or professional athletic event that is not firearm related;
- any school administrative building;
- any part of an establishment licensed to dispense alcoholic beverages for on-site consumption, which part of the establishment is primarily devoted to such purpose;
- any elementary or secondary school facility;
- any area technical center;
- any college or university facility unless the licensee is a registered student, employee or faculty member, and the weapon is a stun gun or nonlethal electric weapon;
- in a passenger terminal or sterile area of an airport, except where the firearm is encased for checking in as baggage; or
- any place where carrying a concealed weapon or firearm is prohibited by federal law.

Violation of s. 790.06(12), F.S., is a second degree misdemeanor.

Section 281.01, F.S., defines the term “Capitol Complex” as “that portion of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street...the State Capital Circle Office Complex located in Leon County, Florida.”

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 2654 expands the list of places a person licensed to carry a concealed weapon or firearm is prohibited from doing so to include district Legislative offices, if posted in such a manner as to notify the public of the prohibition, and certain listed areas of the Capitol Complex. Legislators’ district offices must be posted to give the public notice if the member elects to prohibit the carrying of concealed weapons or firearms on the premises.

The bill specifically provides for firearms and weapons carried onto the listed properties to either be secured by Capitol Police in a convenient location or in the person’s vehicle in a garage attached to one of the listed buildings.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Persons who are authorized to carry a concealed weapon or firearm by virtue of the license issued to them under s. 790.06, F.S., will be prohibited from carrying in certain areas of the Capitol Complex or in district Legislative offices, if the offices are posted to give notice.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2664

SPONSOR: Natural Resources Committee and Senator Smith

SUBJECT: Vessel Safety

DATE: April 6, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Kiger	NR	Fav/CS
2.	Dodson <i>AW</i>	Skelton <i>SR</i>	HP	
3.			CJ	
4.			AGG	
5.			AP	
6.				

I. Summary:

The committee substitute authorizes the operation of law enforcement vehicles without the display of lighted lamps under certain conditions. The threshold for owners or operators of vessels to report damage to vessels or property resulting from boating accidents is raised from \$500 to \$2,000. Law enforcement officers must submit written investigative reports regarding boating accidents resulting in damage to vessels or other property, within 24 hours after completing an investigation, to the Division of Law Enforcement (division) at the Fish and Wildlife Conservation Commission (FWCC); the bill raises the damage threshold from \$500 to \$2,000 for the reporting of such accidents. If a vessel is leased, rented, or chartered at the time of an accident, the person offering the vessel for lease, rent, or charter is responsible for reporting accidents involving damage to the vessel or other property.

The committee substitute authorizes state and local law enforcement personnel to operate in federally designated safety zones, security zones, regulated navigation areas, or naval vessel protection zones if necessary to augment federal law enforcement efforts and if there is a compelling need to protect the residents and infrastructure of the state. The federal government's requests for enforcement assistance must be made to the Florida Department of Law Enforcement (FDLE) through the Florida Mutual Aid Plan established in s. 23.1231, F.S.

The committee substitute provides that persons may not operate a vessel, or authorize the operation of a vessel within the federally designated exclusion areas, and creates misdemeanor and felony penalties for persons violating provisions of the bill relating to those federally designated areas. Law enforcement officers are provided with authority to arrest persons without a warrant when there is probable cause to believe that a person has committed a violation of a federally designated safety zone, security zone, regulated navigation area, or naval vessel protection zone.

The committee substitute substantially amends ss. 316.217, 327.301, 327.35215, 327.731, and 901.15, Florida Statutes, and creates s. 327.461, Florida Statutes.

II. Present Situation:

Lighted Lamps on vehicles - Section 316.217, F.S., provides that every vehicle operated upon a highway within the state shall display lighted lamps and illuminating devices at any time from sunset to sunrise, including the twilight hours, and during any rain, smoke, or fog. The statutes do not contain an exemption from the lighting requirements for law enforcement officers.

According to the FWCC's Commission Approved Legislative Proposals 2004 Session, federal, state and local law enforcement officers operate without headlights to conduct investigations and apprehend violators, and as a matter of safety when an officer is approaching a potentially dangerous situation. The FWCC "currently prohibits the use of vehicles at night without full compliance with the laws addressing vehicle lighting" but also states that "operating without headlights is especially useful for patrol operations due to the unique nature of conservation law enforcement. FWCC law enforcement patrols are conducted on large, rural, unlighted land and water areas. The use of headlights when approaching potential criminal activities places the officer at a tactical disadvantage while greatly impeding the ability of officers to apprehend violators and discover criminal acts."

Federally designated exclusion areas - Federally designated safety zones, security zones, regulated navigation areas, and naval vessel protection areas are provided for in Title 33, Code of Federal Regulations (C.F.R.), part 165.

- A safety zone is a water area, shore area, or water and shore area to which, for safety or environmental purposes, access is limited to authorized persons, vehicles, or vessels. It can be stationary and described by fixed limits, or it may be described as a zone around a vessel in motion.
- A security zone is an area of land, water, or land and water which is so designated by the Captain of the Port or District Commander for as long as is necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard ports, harbors, territories, or waters of the United States from destruction, loss or injury from sabotage or other subversive acts or accidents.
- A regulated navigation area is a water area within a defined boundary for which vessel navigation regulations are established under 33 C.F.R. part 165.
- A naval vessel protection zone is a 500-yard regulated area of water surrounding large U.S. naval vessels that is necessary to provide for the safety or security of those vessels.

FWCC Homeland Security Law Enforcement Assistance - According to information provided by the FWCC, the agency has provided more than 34,000 hours of directed patrol addressing domestic security at a cost of roughly \$2 million. After September 11, 2001, the U.S. Coast Guard requested that the FWCC assist in providing waterside security in the federal security zones surrounding cruise vessels while berthed in a Florida seaport. This service continues today at a cost of approximately \$90,000 a month with no federal reimbursement for

normal duty operations. During times of "high alert", the FWCC estimates that costs rise approximately 20 percent.

However, state law does not authorize the FWCC to enforce in federally established exclusion areas. In two specific cases, a group of divers and a vessel violated the federally designated exclusion areas, but without specific enforcement authority, the FWCC could only detain the violators until the U.S. Coast Guard arrived to take them into custody.

Florida Mutual Aid Plan - The Florida Mutual Aid Plan (Plan) outlines the responsibilities of the state law enforcement community, as well as the security component of the Florida National Guard, in responding to emergencies and disasters. The plan is developed under the authority of the Florida Mutual Aid Act contained in Chapter 23, Part I, Florida Statutes., and is revised annually.¹

Under the Plan, the FWCC's Division of Law Enforcement is responsible for conducting waterborne security, evacuations, search and rescue, waterborne law enforcement, and patrol of rural natural areas. The FWCC is required to assist the FDLE with communications issues and assist in missions where specialized assets and equipment such as 4 x 4 vehicles, ATVs, vessels, and aircraft are required. According to the FWCC, the agency does not have vessels that are the proper size or construction to withstand this assignment.

III. Effect of Proposed Changes:

Section 1. Amends s. 316.217, F.S., to authorize the operation of law enforcement vehicles without the display of lighted lamps under the following conditions:

- If operation of the vehicle is necessary to the performance of a law enforcement officer's duties.
- If the law enforcement agency has a written policy providing guidelines and authorizing the operation of a vehicle without the display of lighted lamps.
- If the law enforcement vehicle is being operated in compliance with agency policy.
- If the operation of the vehicle without the display of lighted lamps can be safely accomplished.

The authority to operate a vehicle with the display of lighted lamps does not relieve the vehicle operator of the duty to drive with due regard for public safety, or provide protection to the vehicle operator from the consequences of operating the vehicle with reckless disregard for the safety of others.

Section 2. Amends s. 327.301, F.S., to raise from \$500 to \$2,000 the threshold for which owners or operators of vessels must forward to the division a written report of damage to vessels or property resulting from boating accidents. Raises from \$500 to \$2,000 the threshold at which law enforcement officers who investigate a boating accident resulting in damage to vessels or other property must forward a written report of the investigation to the division within 24 hours. Provides that if a vessel is leased, rented, or chartered at the time of an accident, the person offering the vessel for lease, rent, or charter is responsible for reporting accidents involving

¹ Florida Mutual Aid Plan (State Law Enforcement Policy Guidelines for Emergency Response), FDLE, June 2003.

damage to the vessel or other property. Provides that all persons, not just vessel operators, who fail to file the required written reports commit a noncriminal infraction punishable with a \$50 fine.

Section 3. Amends s. 327.35215, F.S., to repeal outdated references to wildlife enforcement officers and freshwater fisheries enforcement officers. Repeals provisions providing that moneys collected by the Clerk of the Court for infractions committed by a violator arrested by a wildlife enforcement officer or a freshwater fisheries enforcement officer be deposited into the State Game Trust Fund. Clarifies that moneys collected by the Clerk of the Court for infractions committed by violators arrested by an officer employed by a state law enforcement agency must be deposited into the Marine Resources Conservation Trust Fund.

Section 4. Amends s. 327.731, F.S., to remove the violation of laws relating to muffling devices from the list of noncriminal infractions for which a \$50 fine is imposed.

Section 5. Creates s. 327.461, F.S., relating to safety zones, security zones, regulated navigation areas, and naval vessel protection zones (federally designated exclusion areas). Provides that persons may not operate a vessel, or authorize the operation of a vessel, in violation of a federally designated exclusion area as those areas are defined in and established pursuant to 33 C.F.R. part 165.

Establishes that the intent of the section is to provide for state and local law enforcement agencies to operate in federally designated exclusion areas. Authorizes state and local law enforcement personnel to enforce in federally designated exclusion areas at the request of a federal authority if state and local assistance is necessary to augment federal law enforcement efforts, and if there is a compelling need to protect the residents and infrastructure of the state. Requests for state and local law enforcement assistance must be made to the Department of Law Enforcement through the Florida Mutual Aid Plan described in s. 23.1231, F.S.

Provides first degree misdemeanor penalties punishable by a fine of \$1,000, or imprisonment of up to 1 year, or both, for:

- Persons who operate a vessel or who authorize the operation of a vessel in violation of a federally designated exclusion area, and
- Persons who enter a federally designated exclusion area by swimming, diving, wading or other similar means.

Provides third degree felony penalties punishable by a fine of up to \$5,000, or imprisonment of up to 5 years, or both, for:

- Persons who continue to operate a vessel or who continue to authorize the operation of a vessel in violation of a federally designated exclusion area, and
- Persons who remain within or who reenter a federally designated exclusion area after being warned by a law enforcement officer or competent military authority not to do so.

Provides that each excursion into a federally designated exclusion area is considered a separate offense. Entry into a federally designated exclusion area authorized by a port captain or the port captain's designee is not a violation.

Section 6. Amends s. 901.15, F.S., to provide that law enforcement officers do not need a warrant to arrest persons if there is probable cause to believe that a person has committed a violation of a federally designated exclusion area.

Section 7. Provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The committee substitute may violate the "single subject" requirements of s. 6, Art. III, of the State Constitution. This bill is entitled an "Act relating to vessel safety" but authorizes the operation of vehicles without lighted lamps on the highways of the state.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons found guilty of violating provisions of the committee substitute relating to federally designated exclusion areas can expect to pay significant fines and/or be incarcerated. Persons found guilty of violating provisions relating to lighted lamps on vehicles can expect to pay a \$50 fine. Persons found guilty of violating provisions relating to the required reporting of boating accidents can expect to pay a \$50 fine.

C. Government Sector Impact:

Providing ongoing law enforcement assistance in federally designated exclusion areas will continue to have a significant fiscal impact on the FWCC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/ SB 2766

SPONSOR: Comprehensive Planning Committee and Senator Constantine

SUBJECT: Emergency Planning / Right-to-Know Act

DATE: April 6, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CP	Fav/CS
2.	Dodson <i>RW</i>	Skelton <i>STB</i>	HP	
3.				
4.				
5.				
6.				

I. Summary:

This Committee Substitute (CS) updates the date of a reference to a hazardous substances list in the federal Emergency Planning and Community Right-to-Know Act (EPCRA).

This bill amends section 252.85 of the Florida Statutes.

II. Present Situation:

Part II of s. 252, F.S., is the Florida Hazardous Materials Emergency Response and Community Right-to-Know Act of 1988. The Department of Community Affairs (DCA) is responsible for providing administrative support, including staff, facilities, materials, and services, to the State Hazardous Materials Emergency Response Commission to enable the commission and local emergency planning committees to perform their functions under the federal Emergency Planning and Community Right-to-Know Act (EPCRA).

Section 252.84(1), F.S., states that it is the intent of the Legislature that state activities and expenditures under this part be self-sustaining, supported primarily by the fees provided in this part. Section 252.85, F.S., requires owners or operators of facilities with hazardous materials provide DCA with various registration, filing, and reporting fees to support state administration of EPCRA requirements. Section 252.85(3), F.S., requires:

Any owner or operator of a facility that is required to submit a report or filing under s. 313 of EPCRA shall pay an annual reporting fee not to exceed \$150 for those s. 313 EPCRA listed substances in effect on January 1, 1998.

However, EPCRA has updated the 1998 list. Because the current reference is obsolete, many owners or operators of facilities with hazardous materials inadvertently submit fees for reports for which the fee provisions do not apply. In these cases, the department has to process a refund for these fees, which requires a specific form and processing through the department's Finance and Accounting section, and subsequent vouchering through the Chief Financial Officer. In addition, facility owners or operators may not be submitting reports on hazardous materials required by the updated EPCRA.

III. Effect of Proposed Changes:

Section 1 amends s. 252.85(3), F.S., to revise a date (from 1998 to 2004) of a reference to a hazardous substances list in the federal Emergency Planning and Community Right-to-Know Act (EPCRA). This will ensure that the proper reports are submitted to DCA, as required under EPCRA.

Section 2 provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

A slight increase in overall program revenues may be realized by DCA due to the payment reporting requirements. However, DCA reports that this increase will be negligible.

B. Private Sector Impact:

The CS clarifies reporting and fee payment requirements under EPCRA. Some industries will be required to submit reports, with the required fees, on hazardous materials as required by EPCRA.

C. Government Sector Impact:

DCA will realize savings by resolving the current conflict with respect to chemical reporting and fee payment requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SJR 566

SPONSOR: Senator Geller

SUBJECT: Basic Rights

DATE: April 6, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Lang	JU	Favorable
2.	Dodson <i>LD</i>	Skelton <i>SB</i>	HP	
3.			RC	
4.				
5.				
6.				

I. Summary:

Senate Joint Resolution 566 amends Article I, Section 2 of the Florida Constitution to delete provisions authorizing the Legislature to regulate or prohibit the ownership, inheritance, disposition, and possession of real property by aliens ineligible for citizenship.

This Senate joint resolution amends Article 1, Section 2 of the Florida Constitution.

II. Present Situation:

Constitutional Amendment Process

Article XI of the Florida Constitution provides for five methods amending the Constitution. They are: 1) proposal by the Legislature; 2) revision commission; 3) initiative; 4) constitutional convention; and 5) taxation and budget reform commission.

Article XI, s. 1 of the Florida Constitution provides for proposed changes to the Constitution originating with the Legislature:

SECTION 1. Proposal by legislature.--Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

Margin of Approval by Electors

The Constitution provides that a proposed amendment or revision must pass by a simple majority of electors voting on the measure.¹

Submission to Electors

A proposed amendment to the Constitution may be submitted to the electors at two different times. The default provision is that a proposed amendment is submitted to the electors at the next general election more than 90 days after the proposed amendment is filed.² However, the Legislature can move up the date of submission to the electors of a single amendment by enacting a law providing for submission at an earlier special election more than 90 days after the proposed amendment is filed.³

Effective Date of Amendment

An amendment approved by the electors may take effect at two different times. The default provision is that an approved amendment is effective on the first Tuesday after the first Monday in January following the election.⁴ An amendment also may be effective on another date specified in the amendment.⁵

Under s. 101.161(1), F.S., the ballot statement for a joint resolution is not limited to 75 words, but the ballot title may not exceed 15 words.

Basic Rights

Article I, s. 2 of the Florida Constitution, which sets forth Florida's constitutional guaranty of property rights, provides:

Basic Rights.--All natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property; *except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law.* No person shall be deprived of any right because of race, religion, national origin, or physical disability.

Emphasis added. This constitutional provision has its genesis in the Florida Constitution of 1868, which provided that “[f]oreigners who are or who may hereafter become bona fide residents of the State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.”

This provision was transferred to the Florida Constitution of 1885 and amended by the voters in 1926 to provide that “[f]oreigners who are eligible to become citizens of the United States under

¹ The actual language in the Constitution provides that a proposed amendment or revision must be approved by “vote of the electors,” defined as “... the majority of those voting on the matter in the election, general or special ...”. Art. XI, s. 5(d); Art. X, s. 12(d), FLA CONST.

² Art XI, s. 5(a), FLA CONST.

³ *Id.*

⁴ Art XI, s. 5(d), FLA CONST.

⁵ *Id.*

the provisions of the laws and treaties of the United States shall have the same rights as to the ownership, inheritance and disposition of property in the State as citizens of the State, but the Legislature shall have power to limit, regulate, and prohibit the ownership, inheritance, disposition, possession and enjoyment of real estate in the State of Florida by foreigners who are not eligible to become citizens of the United States under the provisions of the laws and treaties of the United States.”

The current provision pertaining to the Legislature’s ability to regulate or prohibit an alien’s right to own, inherit, dispose, and possess real property has been in the Florida Constitution since 1968.⁶ There is no Florida case law construing this provision. Additionally, there are only two Florida Statutes currently in existence that pertain to an alien’s real property rights. Section 198.04, F. S., provides for a tax to be imposed upon the real property of an alien that is located in this state upon the death of the alien. Section 732.1101, F.S., simply provides that aliens shall have the same rights of inheritance as citizens.

Under Florida’s constitutional provision, property ownership by “aliens ineligible for citizenship” may be limited, regulated or prohibited. When this provision was added to the Constitution, the phrase “alien ineligible for citizenship” referred primarily to Asians, because at the time federal law limited naturalization to “white persons and persons of African nativity or descent.”⁷ In 1923, the United States Supreme Court determined “Generally speaking, the natives of European countries are eligible [for citizenship]. Japanese, Chinese and Malays are not.”⁸

Alien Land Laws in Other States

Florida is one of only two states that currently provide for the regulation of property ownership by aliens ineligible for citizenship. During the general election on November 5, 2002, New Mexico voters rejected a constitutional amendment repealing a section which mandates that unless otherwise provided by law, aliens who are not eligible to become citizens, and corporations majority-owned by such aliens, are prohibited from acquiring any interest in real property in New Mexico.

Supreme Courts in California, Oregon, and Montana have ruled that their states’ Alien Land Laws were unconstitutional. *Sei Fujii v. State*, 242 P. 2d 617 (Cal.1952); *Namba v. McCourt*, 204 P. 2d 569 (Or. 1949); *Oakland v. State*, 287 P. 2d 39 (Mont. 1955). In *Sei Fujii v. State*, the California Supreme Court stated, “By its terms the land law classifies persons on the basis of eligibility to citizenship, but in fact it classifies on the basis of race or nationality. This is a necessary consequence of the use of the express racial qualifications found in the federal code.”

⁶ The Florida Constitution does not define the term “alien.” Only one Florida Statute, s. 327.02(1), defines the term “alien” by providing that an alien is “...a person who is not a citizen of the United States.” The Federal Code defines an alien as any person not a citizen or national of the United States. See 8 U.S.C.A. s. 1101(a)(3).

⁷ *Terrace v. Thompson*, 263 U.S. 197, 220 (1923).

⁸ *Id.*

Immigration Law

The Immigration and Nationality Act⁹ contains provisions that relate to the immigration, temporary admission, naturalization, and removal of aliens. Generally, aliens ineligible to naturalize, that is, to become naturalized U.S. citizens, include but are not limited to, persons who:

- Are not yet 18 years of age (with some exceptions).
- Have not been lawfully admitted for *permanent residence*. Permanent residence means having been legally accorded the privilege of residing permanently in the United States in accordance with the immigration laws.
- Have not resided continuously as a lawful permanent resident in the United States for at least 5 years prior to the filing of an application for naturalization (some brief departures from the United States do not disrupt continuity).
- Cannot demonstrate that he or she has been a person of good moral character for five years prior to the filing of the application for naturalization. A person cannot be found to be a person of good moral character if, during the last 5 years, he or she has committed certain crimes or given false information in order to gain immigration benefits.
- Are not able to read, write, speak and understand the English language (there are certain exemptions based on age and medical impairments).
- Cannot demonstrate knowledge and understanding of the fundamentals of the history and principles and form of government of the United States (there are certain exemptions based on age and medical impairments).¹⁰

Generally, *illegal aliens* include non-U.S. citizens present in the United States in violation of the U.S. immigration laws, such as a person who entered the United States without being inspected by an immigration officer, or a non-U.S. citizen who entered legally but overstays or violates his or her immigration status. Examples include, but are not limited to:

- Aliens who enter the United States by crossing the border at a place other than a designated entry point in order to avoid inspection.
- Aliens who enter the United States at an entry point but who lack valid admission documents.
- Aliens who enter the United States legally as visitors or students but who stay beyond the permitted time or do not continue their studies as required.
- Aliens who enter the United States legally, but commit certain crimes while in the United States.¹¹

III. Effect of Proposed Changes:

This resolution would amend Article I, s. 2 of the Florida Constitution to delete the provision that currently allows the Legislature to prohibit or regulate an alien's right to own, inherit, dispose,

⁹ Laws relating to naturalization are provided at Immigration and Nationality Act (INA), s. 301 et seq; laws relating to removal of illegal aliens are generally found at INA s. 212 and s. 237.

¹⁰ Information provided by Andrea Rogers, Assistant District Counsel, Office of the District Counsel, Department of Homeland Security, Miami, Florida, on 3-26-03.

¹¹ *Id.*

and possess real property. This would allow aliens to enjoy property rights similar to those currently afforded to citizens of the state.

This resolution provides no effective date for the constitutional amendment. In accordance with s. 5 of Article XI of the Florida Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The impact of the joint resolution on the private sector is indeterminate.

C. Government Sector Impact:

Each constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election. Costs for advertising vary depending upon the length of the amendment. However, the publication cost per amendment is estimated to be approximately \$35,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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